

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. APOLONIO DUMDUMA AND CANDIDO CAINDOY, DEFENDANTS AND APPELLANTS.

G. R. No. 34888. August 19, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The defendants appeal from the judgment of the Court of First Instance of Leyte convicting them of robbery with homicide and sentencing them to life imprisonment with the accessory penalties, jointly and severally, to indemnify the heirs of the deceased, Go Bongco, in the sum of P1,000, and to pay the costs; they contend that the court erred in holding that they have committed the crime of robbery and finding them guilty of said crime with homicide, instead of finding only Apolonio Dumduma guilty, and only of homicide, acquitting Candido Caindoy.

In our opinion, it has been fully proven that on the occasion in question, robbery was committed and in connection therewith Go Bongco was assaulted and killed. The latter, according to the testimony of his wife (page 8, t. s. n.), had P22 with him when he left his home on the morning of the crime; he reached the town of La Paz where he cured Chua Siaco, who paid him P18 (page 52, id.). On his way back, Gui Uy Co saw him in "his shop that night exchanging the loose change he had amounting to P10 for paper money and placing it with other bills which he carried. A few moments later, about 7.30 that evening, the victim got into Yu Piac's motor car which was going his way, arriving at the barrio of Guinarona half an hour later, or about 8 o'clock, walking the rest of the distance to his home in the municipality of Dagami; that nearly an hour later when the defendants attacked him, he exclaimed: "Wah-pay-ah! Apolonio take my money if you want, but don't kill me, for we are fellow-countrymen!" (Page 32, t. s. n.) It follows, by an inference sufficient in law, that when the deceased was attacked by the accused, he carried money with him, which in the absence of evidence to the contrary, must be presumed to be the said amount of P40 consisting of the P22 he had with him when he left his home and the P18 given him in La Paz by Chua Siaco.

That the money which the deceased had at the beginning of the assault, and which in view of the blows he received he was willing to turn over to his assailants had disappeared when the body was being removed, although strewn about were a handkerchief, buttons torn from his shirt, and other articles.

The clear and unavoidable conclusion from these facts is that the accused took the money, which was the motive of the homicide.

With regard to the part which appellant Candido Caindoy took in the crime, the record shows that:

A few moments before the incident while Yu Piao was talking with the deceased, he saw two persons passing in front of his shop going towards Dagami, both wearing black trousers, one of them with a white shirt and the other with a white undershirt, one with a cap and the other with a pandan hat.

A few moments later witness Pedro Balatar saw and recognized the defendants walking in front of him, and

about five arm's lengths from another person, whom he did not at the time recognize.

During the assault, Cornelio Balatar, who witnessed it, recognized defendant Apolonio Dumduma wearing a cap, short sleeves and black trousers, and saw but did not recognize his companion, who wore a pandan hat and a shirt with short sleeves. Examining the testimony of this witness given at the hearing, in connection with his affidavit Exhibit 1, we conclude that although he saw the appellant Candido Caindoy on that occasion, he did not recognize him.

Ramon Maray also testifies that he saw two assailants on the occasion, even though he did not recognize Candido Caindoy, and he affirms that one of them wore a pandan hat, undershirt, and black trousers, and that Candido Caindoy who was pointed out to him at the trial, was one of the two he saw that night.

And Mateo Amado testifies that at about 9 o'clock in the morning of June 2, 1930, which was the day after the night in question, the appellant Candido Caindoy entered his billiard hall with his shirt stained with blood on the right side and armpit, and upon being questioned regarding them, called said witness Mateo Amado aside, and secretly said to him: "Say nothing about these stains, lest someone should say they are bloodstains; especially since a Chinaman was murdered last night—Chinaman Go Bunsuan. Furthermore, many people knew that Apolonio and I were constant companions; but I did not help in that murder committed by Apolonio;" and thereupon the said accused Caindoy went to a nearby river, where he washed off the bloodstains. This testimony is corroborated by the affidavit Exhibit 2 presented by the defense.

All this testimony given by witnesses whose veracity there is not in the record any reason to doubt, constitutes, to our mind, sufficient evidence that the appellant took a direct and personal part in the crime and is as much liable as his codefendant Apolonio Dumduma.

Finding no modifying circumstance, the judgment appealed from being in accordance with the evidence and the law, the same is hereby affirmed in toto, with costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Villa-Real, and Imperial, JJ., concur.

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